



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Public Copy

FEB 28 2001

File: EAC 00 108 52345 Office: Vermont Service Center Date:

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(iii)

IN BEHALF OF PETITIONER: Self-represented

Identification data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Weimann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected.

The petitioner is a restaurant. It seeks classification of the beneficiary as a chef/manager trainee for an indefinite period. The director determined that the petitioner has not demonstrated the proposed training is not available in the beneficiary's own country. The director also determined that the petitioner has not established that the beneficiary qualifies for classification pursuant to section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(iii).

The beneficiary states that the reason for the appeal is "I would like to improve status to citizenship to facilitate education in the United States. To work as restaurateur while going to school and eventually I would like to go to medical school in the U.S.A. to pursue a career in medicine. Above opportunities are not available in Brazil."

The regulation at 8 C.F.R. 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party.* For purposes of this section and §§103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

The regulation at 8 C.F.R. 103.3(a)(2) states:

(v) *Improperly filed appeal-*(A) *Appeal filed by person or entity not entitled to file it-*(1) *Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

The appeal has not been filed by the petitioner or an affected party, but rather by the beneficiary. Therefore, the appeal must be rejected.

ORDER: The appeal is rejected.